

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

In the Matter of
James O. Harvey, D.D.S.
License No. D6511

**STIPULATION AND ORDER
FOR STAYED SUSPENSION**

The Minnesota Board of Dentistry ("Board") is authorized pursuant to Minn. Stat. ch. 150A, § 214.10, and § 214.103 to license and regulate dentists, to refer complaints against dentists to the Attorney General for investigation, and to take disciplinary action when appropriate.

The Board received a complaint(s) against James O. Harvey, D.D.S. ("Licensee"). The Board's Complaint Committee ("Committee") reviewed the complaint(s) and referred the matter to the Attorney General for investigation. Following the investigation, the Committee held a conference with Licensee on April 8, 2005. The Committee and Licensee have agreed that the matter may now be resolved by this stipulation and order.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between Licensee and the Committee as follows:

A. Jurisdiction. Licensee holds a license to practice dentistry in the State of Minnesota from the Board and is subject to the jurisdiction of the Board with respect to the matters referred to in this stipulation. Licensee states that he does not hold a license to practice dentistry in any other jurisdiction and does not hold any other professional or occupational licenses.

B. Facts. This stipulation is based upon the following facts:

Background

1. On September 5, 1990, the Board adopted a stipulation and order ("1990 Order") that placed conditions on Licensee's license to practice dentistry in the State of Minnesota. The 1990 Order addressed the following issues: inadequate infection control procedures and substandard recordkeeping. After completing the requirements of the 1990 Order, the Board granted Licensee an unconditional license on February 4, 1991.

2. On June 12, 1998, the Board adopted a stipulation and order ("1998 Order") that placed conditions on Licensee's license to practice dentistry in the State of Minnesota. The 1998 Order addressed the following issues: inadequate infection control procedures; substandard periodontal treatment; and substandard recordkeeping. After Licensee completed the requirements of the 1998 Order, the Board granted Licensee an unconditional license on January 21, 2000.

Inadequate Safety and Sanitary Conditions

3. Licensee failed to maintain adequate safety and sanitary conditions for a dental office. Licensee also failed to comply with the most current infection control recommendations and guidelines of the Centers for Disease Control (CDC), as described below:

a. Licensee failed to remove his contaminated gloves before making an entry in a patient's chart.

b. Licensee inappropriately placed contaminated sharps into an open or uncovered sharps container in his operatory. During the conference, Licensee stated that he

has since purchased an appropriate sharps container for his dental office and has obtained a waste disposal hauler.

c. Licensee inappropriately placed contaminated waste with the general garbage rather than in a sealable bag set aside for contaminated waste.

d. Licensee failed to wear heavy-duty, puncture resistant utility gloves instead of latex gloves when processing dental instruments. During the conference, Licensee stated that he has since purchased appropriate utility gloves.

e. Licensee failed to properly maintain a first aid kit and emergency resuscitation equipment in his office. During the conference, Licensee failed to adequately articulate to the Committee the proper administration of medications contained within his emergency treatment kit during a dental emergency, what an emergency kit should contain, and what positive pressure oxygen was.

f. Licensee failed to properly secure the nitrous oxide and oxygen tanks to the wall in his dental office.

g. Licensee failed to properly label his waste containers with "Hazardous Waste" labels in his operatories. During the conference, Licensee stated that he has since purchased the appropriate labels for his waste containers.

h. During the investigation, photographs were taken of various drawers throughout Licensee's office. These photographs revealed extracted teeth and miscellaneous non-sterile items including fuses, screws, and washers stored amongst other sterile items in Licensee's blue cabinet drawers. During the conference, Licensee stated that he has since removed the extracted teeth and miscellaneous non-sterile items from the drawers.

i. During the conference, the Committee found that Licensee failed to adequately articulate to them the following matters regarding infection control: different levels of sterilization; and proper handling of contaminated clinical surfaces and radiographic film packets. The Committee also found that Licensee failed to comply with certain other infection control guidelines such as having adequate separation in the instrument processing area, proper protective barriers on controls of nitrous oxide unit, and utilizing patient safety glasses.

C. Violations. Licensee admits that the facts and conduct specified above constitute violations of Minn. Stat. § 150A.08, subd. 1(10) and Minn. R. 3100.6200 K and 3100.6300 (failure to maintain adequate safety and sanitary conditions for a dental office) and are sufficient grounds for the disciplinary action specified below.

D. Disciplinary Action. Licensee and the Committee recommend that the Board issue an order as follows:

1. Stayed Suspension. Licensee's license to practice dentistry in the State of Minnesota is hereby **SUSPENDED**. The suspension is **STAYED** conditioned on Licensee's compliance with all of the conditions set forth in paragraph E below. When Licensee has complied with all of the conditions in paragraph E below, Licensee may petition to have the stayed suspension removed from Licensee's license pursuant to paragraph F of this stipulation and order.

E. Conditions of Stayed Suspension. Licensee shall comply with the following terms, conditions, and requirements. None of the examinations, consultative services, or coursework taken pursuant to this stipulation and order may be used by Licensee to satisfy any of

the continuing dental education/professional development requirements of Minn. R. 3100.5100, subpart 2.

1. Center for Disease Control ("CDC") Guidelines Examination. Within 30 days of the effective date of this order, Licensee shall successfully complete the brief examination (comprised of 27-questions) sponsored by the CDC based on the 2003 Guidelines for Infection Control in Dental Health-Care Settings.

2. Infection Control Consultant. (Must be pre-approved by the Committee)

a. Initial Evaluation with Infection Control Consultant. Within 60 days of the effective date of this order, Licensee shall hire a board-approved infection control consultant for an evaluation involving consultative and inspection services specifically for his dental office. Licensee must provide to the consultant a copy of this stipulation and order prior to receiving an evaluation. Within 14 days of the completion of the evaluation, Licensee shall cause the consultant to provide to the Committee an extensive written report of the evaluation and compliance recommendations. Licensee shall bear the costs of this evaluation, the preparation of the report, and compliance with any infection control recommendations. Within 30 days of the consultant's report, Licensee shall comply with the consultant's recommendations and submit a written report to the Committee that indicates the changes relative to infection control that Licensee has made in his dental office.

b. Subsequent Evaluation with Infection Control Consultant. Within nine months of the effective date of this order, Licensee shall hire the same board-approved infection control consultant or another infection control consultant pre-approved by the Committee for a subsequent evaluation involving consultative and inspection services

specifically for his dental office. Licensee must provide to the consultant a copy of this stipulation and order prior to receiving a subsequent evaluation. Within 14 days of the completion of the subsequent evaluation, Licensee shall cause the consultant to provide to the Committee an extensive written report of the evaluation and compliance recommendations. Licensee shall bear the costs of this evaluation, the preparation of the report, and compliance with any infection control recommendations. Within 30 days of the consultant's report, Licensee shall comply with the consultant's recommendations and submit a written report to the Committee that indicates the changes relative to infection control that Licensee has made in his dental office.

3. Infection Control Inspection. The Board shall preserve its right to conduct an infection control inspection of Licensee's office contingent upon the evaluation results of the infection control consultant. Licensee shall cooperate with at least one unannounced office visit at his dental office during normal office hours by a representative of the Board. The representative shall conduct an inspection of Licensee's office for the purpose of reviewing safety and sanitary conditions. Additional office visits shall be at the discretion of the Committee.

4. Coursework. Licensee shall successfully complete the coursework described below. All coursework must be approved in advance by the Committee. None of the coursework may be home study. Licensee is responsible for locating, registering for, and paying for all coursework taken pursuant to this stipulation and order. If Licensee attends an undergraduate or graduate dental school course, Licensee must provide each instructor with a copy of this stipulation and order prior to commencing a course. Licensee shall pass all courses

with a grade of 70 percent or a letter grade "C" or better. Licensee's signature on this stipulation and order constitutes authorization for the course instructor(s) to provide the Committee with a copy of the final examination and answers for any course Licensee takes. Licensee's signature also authorizes the Committee to communicate with the instructor(s) before, during, and after Licensee takes the course about Licensee's needs, performance and progress. The coursework is as follows:

a. Medical Emergencies. Within six months of the effective date of this order, Licensee shall successfully complete a minimum of six hours of instruction in dental office medical emergencies.

5. Written Reports. Licensee shall submit or cause to be submitted to the Board the reports described below. All reports are subject to approval by the Committee:

a. Reports on All Coursework. Within 30 days of completing any coursework, Licensee shall submit to the Board (a) a transcript or other documentation verifying that Licensee has successfully completed the course, if the course is a graduate or undergraduate dental school course, (b) a copy of all materials used and/or distributed in the course, and (c) a written report summarizing how Licensee has implemented this knowledge into Licensee's practice. Licensee's report shall be typewritten in Licensee's own words, double-spaced, at least two pages and no more than three pages in length, and shall list references used to prepare the report. In addition, Licensee's report on the medical emergencies course shall include a list of the medications found in a dental emergency kit, how those medications are used, and how he would respond to different dental emergency situations.

6. Civil Penalty. The Board imposes a civil penalty in the amount of \$1,700 for the conduct described above. The civil penalty shall be paid by cashier's check or money order made payable to the Minnesota Board of Dentistry and shall be delivered personally or by mail to the Minnesota Board of Dentistry, c/o Marshall Shragg, Executive Director, 2829 University Avenue S.E., Suite 450, Minneapolis, Minnesota 55414, within 90 days of the effective date of this stipulation and order.

7. Other Conditions.

a. Licensee shall comply with the laws or rules of the Board of Dentistry. Licensee agrees that failure to comply with the Board's laws or rules shall be a violation of this stipulation and order.

b. Licensee shall fully and promptly cooperate with the Board's reasonable requests concerning compliance with this stipulation and order, including requests for explanations, documents, office inspections, and/or appearances at conferences. Minn. R. 3100.6350 shall be applicable to such requests.

c. If the Board receives a complaint alleging additional misconduct or deems it necessary to evaluate Licensee's compliance with this stipulation and order, the Board's authorized representatives shall have the right to inspect Licensee's dental office(s) during normal office hours without prior notification and to select and temporarily remove original patient records for duplication. Licensee shall fully and timely cooperate with such inspections of Licensee's office and patient records.

d. In the event Licensee should leave Minnesota to reside or practice outside the state, Licensee shall notify the Board in writing of the new location within five days.

Periods of residency or practice outside of Minnesota will not apply to the reduction of any period of Licensee's discipline in Minnesota unless Licensee demonstrates that practice in another state conforms completely to this stipulation and order.

F. Removal of Stayed Suspension. Licensee may petition to have the stayed suspension removed from Licensee's license at any regularly scheduled Board meeting after Licensee has complied with all the conditions of his stayed suspension, provided that Licensee's petition is received by the Board at least 30 days prior to the Board meeting. Licensee shall have the burden of proving that Licensee has complied with the conditions of this stipulation and order and that Licensee is qualified to practice without a stayed suspension. Licensee's compliance with the foregoing requirements shall not create a presumption that the stayed suspension should be removed. Upon consideration of the evidence submitted by Licensee or obtained through Board investigation, the Board may remove, amend, or continue the stayed suspension imposed by this order.

G. Fine for Violation of Order. If information or a report required by this stipulation and order is not submitted to the Board by the due date, or if Licensee otherwise violates this stipulation and order, the Committee may fine Licensee \$100 per late report or other violation. Licensee shall pay the fine and correct the violation within five days after service on Licensee of a demand for payment and correction. If Licensee fails to do so, the Committee may impose additional fines not to exceed \$500 per violation. The total of all fines may not exceed \$5,000. Licensee waives the right to seek review of the imposition of these fines under the Administrative Procedure Act, by writ of certiorari under Minn. Stat. § 480A.06, by application

to the Board, or otherwise. Neither the imposition of fines nor correction of the violation will deprive the Board of the right to impose additional discipline based on the violation.

H. Additional Discipline for Violation of Order. If Licensee violates this stipulation and order, Minn. Stat. ch. 150A, or Minn. R. ch. 3100, the Board may impose additional discipline pursuant to the following procedure:

1. The Committee shall schedule a hearing before the Board. At least ten days prior to the hearing, the Committee shall mail Licensee a notice of the violation alleged by the Committee and of the time and place of the hearing. Within seven days after the notice is mailed, Licensee shall submit a response to the allegations. If Licensee does not submit a timely response to the Board, the allegations may be deemed admitted.

2. At the hearing before the Board, the Committee and Licensee may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this stipulation and order. Licensee waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

3. At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or limitations on Licensee's practice, or suspension or revocation of Licensee's license.

I. Other Procedures for Resolution of Alleged Violations. Violation of this stipulation and order shall be considered a violation of Minn. Stat. § 150A.08, subd. 1(13). The Committee shall have the right to attempt to resolve an alleged violation of the stipulation and

order through the procedures of Minn. Stat. § 214.103, subd. 6. Nothing herein shall limit (1) the Committee's right to initiate a proceeding against Licensee pursuant to Minn. Stat. ch. 14, or (2) the Committee's and the Board's right to temporarily suspend Licensee pursuant to Minn. Stat. § 150A.08, subd. 8, based on a violation of this stipulation and order or based on conduct of Licensee before or after the date of this stipulation which is not specifically referred to in paragraph B. above.

J. Attendance at Conference. Licensee attended a conference with the Committee on April 8, 2005. The following Committee members attended the conference: Freeman Rosenblum, D.D.S.; Ronald King, D.D.S.; and Nadene Bunge, D.H. Assistant Attorney General Tamar Gronvall represented the Committee at the conference. Although Licensee was informed in the Notice of Conference that he could be represented by legal counsel, Licensee has voluntarily and knowingly waived legal representation.

K. Waiver of Licensee's Rights. For the purpose of this stipulation, Licensee waives all procedures and proceedings before the Board to which Licensee may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the facts contained in this stipulation and order and to dispute the adequateness of discipline in a contested proceeding pursuant to Minn. Stat. ch. 14. Licensee agrees that upon the application of the Committee without notice to or an appearance by Licensee, the Board may issue an order imposing the discipline specified herein. The Committee may participate in Board deliberations and voting concerning the stipulation. Licensee waives the right to any judicial review of the order by appeal, writ of certiorari, or otherwise.

L. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this stipulation or a lesser remedy than specified herein, this stipulation and order shall be null and void and shall not be used for any purpose by either party hereto. If this stipulation is not approved and a contested case proceeding is initiated pursuant to Minn. Stat. ch. 14 and section 150A.08, Licensee agrees not to object to the Board's initiation of the proceeding and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this stipulation and the record.

M. Record. This stipulation, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this stipulation. Any reports or other material related to this matter which are received after the date the Board approves the stipulation and order shall become a part of the record and may be considered by the Board in future aspects of this proceeding.

N. Data Classification. Under the Minnesota Data Practices Act, this stipulation and order is classified as public data. Minn. Stat. § 13.41, subd. 4. All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13. They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. Pursuant to federal rule (45 C.F.R. part 60), the Board must report the disciplinary action contained in this stipulation and order to the National Practitioner Data Bank.

O. Entire Agreement. Licensee has read, understood, and agreed to this stipulation and is freely and voluntarily signing it. This stipulation contains the entire agreement between

the parties hereto. Licensee is not relying on any other agreement or representations of any kind verbal or otherwise.

P. Service and Effective Date. If approved by the Board, a copy of this stipulation and order shall be served personally or by first class mail on Licensee. The order shall be effective and deemed issued when it is signed by the President or Vice-President of the Board.

LICENSEE

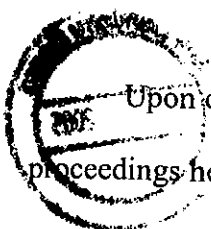
James O. Harvey By: JAMES O. HARVEY, D.D.S.

Dated: May 23, 2005

COMPLAINT COMMITTEE

Marshall Shragg
MARSHALL SHRAGG
Executive Director

Dated: MAY 25th, 2005



ORDER

Upon consideration of the foregoing Stipulation and based upon all the files, records, and proceedings herein,

The terms of the Stipulation are approved and adopted, and the recommended disciplinary action set forth in the Stipulation is hereby issued as an Order of this Board effective this 17th day of June, 2005.

MINNESOTA BOARD
OF DENTISTRY

By:

Linda R. Boyum
LINDA BOYUM, R.D.A.
President